(3) (2)

IN THE STATE ADMINISTRATIVE TRIBUNAL AT JABALPUR

CASE No. O.A. 207 /99

CWP(S) 1278/05

WP 18339/03

APPLICANT

Dr. G.S. Khatri,
Veternary Extension Officer,
Block Development Office, Saja
Distt. Durg.

VERSUS

RESPONDENTS

1. State of Madhya Pradesh
Through the Secretary
Deptt. of Veternary
Govt. of Madhya Predesh
BHOPAL.

2. Deputy Secretary,
Deptt. of Veternary,
Govt. of Madhya Pradesh,
BHOPAL.

3. Director of Veternary Services
Bhopal.

APPLICATION U/S. 19 OF THE ADMINISTRATIVE TRIBUNAL ACT.

Applicant begs to submit as under :-

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (s) No. 1778 of 2005

Petitioner : Dr. G.S. Khatri

Versus

Respondents : State of Madhya Pradesh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Rahul Birthary, counsel for the Petitioner.

Shri Ajay Dwivedi, Panel lawyer for the respondents/State.

ORDER

(passed on 29th August, 2006)

The following order of the Court was passed by **Satish K. Agnihotri**, J.

1. Learned counsel for the petitioner submits that the petitioner was appointed as Veterinary Assistant Surgeon by order dated 6.5.1972 (Annexure A/5) on temporary basis. Thereafter, service of the petitioner was regularized on the basis of approval granted by the Public Service Commission by order dated 23.5.1978 (Annexure A/2).

2. The respondents/State by order dated 2nd January, 1999 retired the petitioner compulsorily in the interest of public, after having taken into consideration all the service records.

3. The only contention of the petitioner is that the petitioner was neither given any show cause notice nor the enquiry was held before the decision

was taken to retire the petitioner compulsorily. The petitioner has not raised any other ground, except the ground of violation of principles of natural justice.

4. The Supreme Court in the case of Union of India Vs. J. N. Sinha and another[1] observed in para 8, as under:-

> "8.....There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

5. The Supreme Court in the case of C. D. Ailawadi Vs. Union of India and others[2] observed in para 8, as under:-

> "8. An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court, (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision....."

6. The Supreme Court in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another[3] while providing for guiding principles observed in para 32, as under:-

> "32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter - of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records; character rolls, both favourable and adverse. If a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also

taken into consideration. That circumstance by itself cannot be a basis for interference....."

7. The Supreme Court in the case of State of Gujarat and another Vs. Suryakant Chunilal Shah[4] observed in paras 23, 24 and 25, as under:-

"23. In order, therefore, to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

24. The performance of a government servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a government servant is to look at his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a government servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing, the whole bundle would disperse. A government servant has, therefore, to keep his belt tight.

25. Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the

matter and on being convinced that his previous conduct justified such an entry, to improve his performance."

8. It is well settled principle of law that the order of compulsory retirement can be challenged only on the ground that the requisite opinion was not formed or the decision was based on the collateral grounds/no evidence, or the decision was arbitrary. It is further established principle of law that the order is based on the subjective satisfaction of the Government. This Court cannot sit as an appellate Court to interfere with the decision of the Government/employer, except in cases of no evidence or established malafide or the order is arbitrary. On perusal of the papers, as stated above, it is clear that in the present case, the order of the compulsory retirement does not suffer from any perversity or illegality, as stated above.

9. Thus, the impugned order is valid and sustainable in law. Accordingly, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

---

[1](AIR 1971 SC 40)
[2](AIR 1990 SC 1004)
[3](AIR 1992 SC 1020)
[4]{(1999) 1 SCC 529}